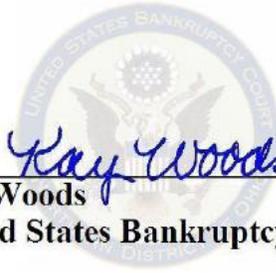


IT IS SO ORDERED.

Dated: September 11, 2015
10:04:32 AM


Kay Woods

Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

MERVIN JONES and
MARY CATHERINE JONES,

Debtors.

* * * * *

MERVIN JONES and
MARY CATHERINE JONES,

Plaintiffs,

v.

VIVIAN MAYO, et al.,

Defendants.

CASE NUMBER 13-41138

ADVERSARY NUMBER 14-4010

HONORABLE KAY WOODS

OPINION REGARDING MOTION FOR SUMMARY JUDGMENT

Before the Court is Motion for Summary Judgment ("Motion")
(Doc. 66) filed by Plaintiffs/Debtors Mervin Jones and Mary

Catherine Jones on August 4, 2015. On September 3, 2015, the Debtors filed Notice of Submission of Supplemental Exhibit (Doc. 69). The Motion is not opposed.

On February 18, 2014, the Debtors filed their Complaint, which commenced this adversary proceeding, seeking to determine the interests, if any, the Defendants may claim in or to real property the Debtors have listed as property of their bankruptcy estate. The named Defendants are Vivian J. Mayo, Daniel Wilson, Bleaker Jones a/k/a Bleaka Jones,¹ Tonya R. Jones, Joe Jones and Frank Gilbert Jones, all of whom are related in some way to the Debtors. Orders granting judgment by default have been entered against (i) Vivian J. Mayo (Doc. 9); (ii) Frank Gilbert Jones (Doc. 31); (iii) Joe Jones (Doc. 55); (iv) Daniel Wilson (Doc. 59); and (v) Tonya R. Jones (Doc. 61), leaving Bleaka Jones as the only defendant remaining in this adversary proceeding.²

The issue before the Court in the Motion is whether the Defendants have any interest in the Salineville Property, as defined *infra* at 5, that would impact the Debtors' interest in

¹ Although the docket and all documents filed in this proceeding indicate that the Defendant is Bleaker Jones, she appeared at a hearing on December 4, 2014 and indicated that her name is actually Bleaka Jones.

² On October 24, 2014, the Debtors moved for default judgment against Bleaka Jones (Doc. 18). On December 4, 2014, Bleaka Jones moved for an extension of time to file an answer or other responsive pleading (Doc. 30). On that same date, the Court denied default judgment against Bleaka Jones and granted Bleaka Jones an extension of time to file an answer or other responsive pleading through December 18, 2014 (Doc. 32). Bleaka Jones filed her Answer (Doc. 37) on December 16, 2014.

this property. For the reasons set forth herein, the Court will grant the Motion.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general order of reference (Gen. Order No. 2012-7) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

I. STANDARD OF REVIEW

Federal Rule of Civil Procedure 56(a), made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7056, states, in pertinent part:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

FED. R. CIV. P. 56(a) (2015). Material facts are those "that might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine issue of material fact exists "if a reasonable person could return a verdict for the non-moving party." *Jacob v. Twp. of W. Bloomfield*, 531 F.3d 385, 389 (6th Cir. 2008) (citing *Anderson*, 477 U.S. at 248).

"The moving party bears the burden of proving the absence of genuine issues of material fact and its entitlement to judgment as a matter of law." *Longaberger Co. v. Kolt*, 586 F.3d 459, 465 (6th Cir. 2009) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986)). The burden then shifts to the nonmoving party to present specific facts demonstrating the existence of a genuine dispute. *Pucci v. Nineteenth Dist. Court*, 628 F.3d 752, 759-60 (6th Cir. 2010) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). In evaluating a motion for summary judgment, "the court must view the factual evidence and draw all reasonable inferences in favor of the nonmoving party." *Banks v. Wolfe County Bd. of Educ.*, 330 F.3d 888, 892 (6th Cir. 2003) (citing *Matsushita*, 475 U.S. at 587).

The nonmoving party "cannot rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but must 'present affirmative evidence in order to defeat a properly supported motion for summary judgment.'" *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1477 (6th Cir. 1989) (quoting *Anderson*, 477 U.S. at 257). That is, the nonmoving party has an affirmative duty to direct the court's attention to those specific portions of the record upon which it seeks to rely to create a genuine issue of material fact. *Id.* at 1479; FED. R. CIV. P. 56(e).

II. STATEMENT OF FACTS

The parties did not file a stipulation of facts, but the pleadings and documents filed in the Debtors' bankruptcy case and this adversary proceeding establish the undisputed material facts set forth below.

A. Bankruptcy Case

On May 22, 2013, the Debtors filed a voluntary petition pursuant to chapter 13 of the Bankruptcy Code. On June 5, 2013, the Debtors timely filed their Schedules A-J (Main Case, Doc. 10). The Debtors identify an interest in real property on Schedule A as "116300 McSwiggen Road, Salineville, Ohio 43945"³ a/k/a 16173 Roses Run Road, Salineville, Ohio 43945 ("Salineville Property"). The related mortgage, state tax liens and delinquent property taxes are also identified on the Debtors' schedules. On Schedule F, the Debtors identify Vivian Mayo as an unsecured non-priority creditor for "claim for interference with inheritance." (Main Case, Doc. 10 at 15.)

Vivian Mayo filed an Objection to Confirmation (Doc. 27, Main Case) alleging that the Salineville Property is not an asset of

³ This address appears to be a typo because the Debtors list their address on the Petition as 16300 McSwiggen Road, which is also the address referenced in Vivian Mayo's Objection to Confirmation (Doc. 27, Main Case). The Debtors' Complaint and Motion refer to property at 16173 Roses Run Road (Columbiana County Permanent Parcel Nos. 75-00804.000, 75-00804.001 and 75-00804.003). (Compl. ¶ 11; Mot. ¶ 3.) Despite discrepancies between these addresses, no party disputes that the adversary proceeding addresses the same properties as the State Court Action, as defined *infra* at 6. Furthermore, Ms. Sharman, as counsel for Bleaka Jones prior to withdrawal, reviewed the documents provided by the Debtors' attorney and agreed there was no longer a dispute.

the bankruptcy estate. The Objection was resolved by Agreed Order (Doc. 30, Main Case) that contemplated the commencement of this adversary proceeding to resolve the property dispute.

B. Background

Debtor Mervin Jones's father, John Jones, Sr., owned the Salineville Property before he died on November 24, 1986, survived by his spouse, Lillie Mae Jones. (Mot., Ex. C.) Together, John and Lillie had several children, including Frank Jones and Debtor Mervin Jones. (*Id.*) Frank Jones died on September 23, 1992 and was survived by his daughter, Vivian Mayo. (*Id.*) On May 8, 1996, Lillie executed a deed transferring ownership of the Salineville Property to Debtor Mervin Jones ("Deed"). (Compl., Ex. B; Mot., Ex. A.) Lillie died on January 12, 2003. (Mot., Ex. C.)

The Defendants filed suit in the Common Pleas Court of Columbiana County, Ohio, Case No. 2012 CV 358 ("State Court Action") and obtained judgment by default against Debtor Mervin Jones on June 28, 2013. (Compl. ¶¶ 14–15.) In the State Court Action, the Defendants alleged that Mervin Jones "fraudulently conveyed the land to other third parties via theft, fraud, forgery and conspiracy, inter-alia, thereby depriving the rightful owners of its use, enjoyment, and all other rights therein related." (*Id.* ¶ 14.) Default judgment entered in the Common Pleas Court was "recorded[,] effectuating a transfer of ownership of the Disputed Property to Vivian Mayo, et al." (*Id.* ¶ 16.) On April 10, 2014,

the Common Pleas Court vacated the default judgment. (Doc. 69.) "While that Entry restored the state action to the active docket, it did not resolve the ultimate questions regarding the disputed claims of ownership." (*Id.* at 1.) Pursuant to the Agreed Order, the parties consented to this Court resolving all disputes regarding the Salineville Property. (Agreed Order ¶ 1.)

C. Adversary Proceeding

The Debtors commenced this adversary proceeding to determine the validity of their interests in the Salineville Property. Despite disputing the validity of the Deed granting the Salineville Property to Debtor Mervin Jones in the State Court Action, "in the course of discovery in this adversary proceeding, no Defendant, including [Bleaker Jones a/k/a Bleaka Jones], produced any document, thing, or valid opinion that the Deed was questionable and thus the transfer invalid." (Mot. ¶ 10.)

On April 27, 2015, the Court held a telephonic status conference, at which counsel for Bleaka Jones, Jacqueline Wise Sharman, Esq., asserted that there were questions of fact regarding whether the signature on the Deed was a forgery. At a telephonic status conference on July 13, 2015, Joseph R. Macejko, Esq., counsel for the Debtors, represented that he had been able to contact Attorney Jerry John Ward, who prepared the 1996 Deed and could attest to the authenticity of the signature. Based on this information, Mr. Macejko stated that Ms. Sharman had represented

to him that her client was willing to enter into an agreed order to resolve the dispute. Ms. Sharman stated that Bleaka Jones had subsequently changed her mind and her client would not sign an agreed order. Ms. Sharman further stated that, based on these circumstances, her only option would be to file a motion to withdraw as counsel. On July 24, 2015, Ms. Sharman filed Motion to Withdraw as Counsel of Record (Doc. 65), and the Court granted her motion on August 11, 2015 (Doc. 67). Bleaka Jones is now proceeding *pro se* in this adversary proceeding.

Attached to the Motion, at Exhibit B, is the affidavit of Mr. Ward. Mr. Ward prepared the Deed for the property at issue and served as a witness and notary to the transfer. (Mot., Ex. B at 2.) In the affidavit, Mr. Ward "attests that proper procedures were followed in the execution of the Deed thereby rendering its execution valid and extinguishing the sole remaining point of contention between the parties to this adversary proceeding." (Mot. ¶ 13.)

III. LAW & ANALYSIS

Based on all of the evidence before the Court, there are no genuine issues of material fact, *i.e.*, the Debtors' interest in the Salineville Property has not been challenged with any supporting evidence or specific factual allegations. In applying the law to these facts, as set forth below, even when viewed in the light most favorable to the non-moving party, Bleaka Jones,

the Debtors have an uncontested interest in the Salineville Property.

The non-moving party has the burden to present affirmative evidence of a dispute concerning a genuine fact, *i.e.*, the invalidity of the Deed. Bleaka Jones cannot rely on non-specific allegations of fraud in her Answer to defeat the Motion. Bleaka Jones's allegation, made through counsel at a telephonic status conference on April 27, 2015, that the signature on the Deed is a forgery has been defeated by the affidavit of Mr. Ward attesting to the authenticity of the signatures.

"It is well settled in Ohio that in order for a deed to be effective to transfer land it must be executed, acknowledged, and delivered. Further, there must be an intention on the part of the grantor to sever himself from the ownership of the property and there must be an acceptance of the property on the part of the grantee." *In re Kusar's Estate*, 211 N.E.2d 535, 541 (Ohio 1965).

"A deed executed in the correct form is presumed to be valid and will not be set aside except upon clear and convincing evidence." *Augenstein v. Augenstein*, 737 N.E.2d 613, 619 (Ohio 2000) (citing *Henkle v. Henkle*, 600 N.E.2d 791, 793-94 (Ohio 1991)). "The presumption of validity attaching to a deed which appears upon its face to have been executed in due form can only be overcome by clear and convincing proof, and the burden of sustaining such burden of proof is on the person challenging the

validity of such deed." *Id.* (citing *Weaver v. Crommes*, 167 N.E.2d 661, 664 (Ohio 1959)).

Bleaka Jones filed an Answer, in which she denies the Debtors' ownership of the Salineville Property. At a telephonic status conference, counsel for Bleaka Jones expressed concern that the signature on the Deed may have been a forgery. Such allegation has been defeated by Mr. Ward's affidavit attesting to the authenticity of the signatures on the Deed. Bleaka Jones has failed to offer any further evidence or specific facts in support her position. As a result, the Deed's validity remains uncontested.

Through submission of the (i) Deed (Compl., Ex. B); (ii) certified title search report (*id.*, Ex. C); and (iii) Deed preparer/witness's affidavit (Mot., Ex. B), the Debtors have established their ownership in the Salineville Property. At this juncture, it is Bleaka Jones's burden to offer support for her position (i) as the challenger of the validity of the Deed; and (ii) as the non-moving party in the context of a motion for summary judgment. Bleaka Jones has failed to respond to the Motion and her Answer lacks specific allegations in support of her denial of the Debtors' ownership interest.

In light of the Debtors' unrefuted evidence – the affidavit of Attorney Jerry John Ward attesting to proper procedures in execution of the Deed – Bleaka Jones has failed to meet her burden

to "overcome by clear and convincing proof" the presumption that the Deed is valid.

IV. CONCLUSION

Based on all of the evidence before the Court, there are no genuine issues of material fact. Viewing the facts in the light most favorable to Bleaka Jones, the Debtors have an uncontested interest in the Salineville Property, free of any alleged and asserted interests of all Defendants in this adversary proceeding. The Debtors' interest has not been refuted by any convincing proof. Bleaka Jones's sole allegation that the Deed contained a forged signature has been defeated by Mr. Ward's affidavit. As a result, the Court grants the Debtors' Motion for Summary Judgment. An appropriate order will follow.

#

IT IS SO ORDERED.

Dated: September 11, 2015
10:04:32 AM


Kay Woods

Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

MERVIN JONES and
MARY CATHERINE JONES,

Debtors.

* * * * *

MERVIN JONES and
MARY CATHERINE JONES,

Plaintiffs,

v.

VIVIAN MAYO, *et al.*,

Defendants.

CASE NUMBER 13-41138

ADVERSARY NUMBER 14-4010

HONORABLE KAY WOODS

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Before the Court is Motion for Summary Judgment ("Motion")
(Doc. 66) filed by Plaintiffs/Debtors Mervin Jones and Mary

Catherine Jones on August 4, 2015. On September 3, 2015, the Debtors filed Notice of Submission of Supplemental Exhibit (Doc. 69). The Motion is not opposed.

On February 18, 2014, the Debtors filed their Complaint, which commenced this adversary proceeding, seeking to determine the interests, if any, the defendants may claim in or to real property the Debtors have listed as property of their bankruptcy estate. The named Defendants are Vivian J. Mayo, Daniel Wilson, Bleaker Jones a/k/a Bleaka Jones, Tonya R. Jones, Joe Jones and Frank Gilbert Jones, all of whom are related in some way to the Debtors. Orders granting judgment by default have been entered against (i) Vivian J. Mayo (Doc. 9); (ii) Frank Gilbert Jones (Doc. 31); (iii) Joe Jones (Doc. 55); (iv) Daniel Wilson (Doc. 59); and (v) Tonya R. Jones (Doc. 61), leaving Bleaka Jones as the only defendant remaining in this adversary proceeding.

For the reasons set forth in this Court's Opinion Regarding Motion for Summary Judgment entered on this date, the Court hereby:

- (i) Finds that the Debtors have an uncontested interest in real property known as 116300 McSwiggen Road, Salineville, Ohio 43945 a/k/a 16173 Roses Run Road, Salineville, Ohio 43945 ("Salineville Property"), free of any alleged and asserted interests of all Defendants in this adversary proceeding;

(ii) Finds that the validity of the deed transferring the Salineville Property to Debtor Mervin Jones is uncontested; and

(iii) Finds that no genuine issue of material fact exists.

As a consequence, the Court hereby **GRANTS** the Debtors' Motion for Summary Judgment.

#